

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

**REGINALD DUNAHUE
ADC #106911**

PLAINTIFF

v.

No. 2:18-cv-103-DPM

**WENDY KELLEY, Director, Arkansas
Department of Correction; MARSHALL
D. REED, Chief Deputy, Arkansas Department
of Correction; JEREMY C. ANDREWS, Warden,
EARU, ADC; JAMES DYCUS, Deputy Warden,
EARU, ADC; DAVID KNOTT, Major, EARU,
ADC; and STEPHANIE PALMER, Sergeant,
East Arkansas Maximum Security Unit, ADC**

DEFENDANTS

ORDER

All material things considered, extraordinary circumstances exist that justify a belated motion for summary judgment on exhaustion. The Court will also accept a motion for judgment on the pleadings that may eliminate some of the six remaining defendants. These issues should have been raised sooner, but the temperature claim flowered late in the case. While allowing a second round of motions may seem unfair, doing so will help focus the issues and parties for everyone. The defendants preserved exhaustion in their answer, so that defense has not been waived. It could be asserted at trial. *Foulk v. Charrier*, 262 F.3d 687, 697 (8th Cir. 2001). This creates the possibility

of two trials in one: the first about exhaustion and another on the merits. That would be needlessly complex. It will be more efficient for the Court to address the exhaustion issues before the jury trial. The Court requests that the parties sprint on this second round of motions. Here's the schedule.

- Motion for summary judgment and motion for judgment on the pleadings due by 26 May 2023 (ten-page limit on the briefs)
- Dunahue's responses due by 9 June 2023 (ten-page limit on briefs)
- Defendants' replies due by 16 June 2023 (five-page limit)

* * *

Motion, *Doc. 218*, granted.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

11 May 2022